

DURANT: PAST AND PRESENT

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Note: This article reviews a series of lawsuits brought by school districts against the State, commonly known as *Durant I*, *Durant II*, and *Durant III*. Begun in 1980 and continuing to the present, this litigation involves the State's alleged failure to fund special education and other programs at constitutionally mandated levels. It should be noted that this is not a legal document intended for use in a court of law. This document is not to be construed to constitute an admission of liability to the districts and intermediate school districts (ISDs) in this State in any litigation or future litigation with a district or ISD. This document is intended as a summary of important and relevant events and as a reference tool encapsulating the *Durant* lawsuits.

DURANT I

The Case: The case commonly referred to as *Durant I* was initially filed in 1980 and alleged a violation of Article 9, Section 29 of the State Constitution of 1963, the so-called mandated cost provision of the Tax Limitation Amendment of 1978, also often named the Headlee Amendment. Specifically, the lawsuit alleged that the State had violated the Headlee Amendment by failing to provide adequate funding for the costs of those activities that the State mandated the plaintiff school districts to perform. A total of 83 school districts and one ISD were plaintiffs in the suit, and an opinion was issued by the Michigan Supreme Court in 1997.

The Decision: The opinion stated that special education, special education transportation, and the school lunch program are required by State law. The Court further opined that the State had violated the Headlee Amendment as it pertains to maintaining proportional funding levels required by law for programs mandated by the State. In other words, the Court found that the State had been funding these programs at lower percentages than those appropriated in 1978, when the Headlee Amendment was adopted. The Court determined the constitutional funding level percentages for special education and special education transportation to be 28.6138% and 70.4165% of necessary costs, respectively, meaning that the State must meet these funding percentages. The Court also issued a monetary "remedy" that was calculated on the amount of "underfunding" in 1991-92, 1992-93, and 1993-94 totaling \$212 million for the original 84 plaintiffs.

Resulting Changes Made in the School Aid Act: Public Act (P.A.) 142 of 1997 provided the first funding changes to the State School Aid Act in response to the Supreme Court's ruling in *Durant I*. This Act appropriated the \$212 million for the plaintiffs, and another \$636 million for nonplaintiff districts, to be awarded in two payments: yearly cash payments over 10 years, and bonding options or annual cash payments over 15 years. The Act also was restructured with respect to how the State paid for special education pupils and special education costs. Briefly, districts report special education costs to the State. Then, a calculation is made to determine roughly 28% of the approved costs of special education and 70% of the approved costs of special education transportation. This is the State's constitutional obligation according to the Supreme Court. Districts were paid foundation allowances for special education pupils. If the special education foundation allowance total met or exceeded the State's cost obligation, no further payment was made. If not, a payment was made to ensure that districts received at least 28% and 70% of the costs of special education.

DURANT II

The Case: A total of 250 districts and ISDs brought the lawsuit commonly referred to as *Durant II* against the State in May of 1998, making three claims. These plaintiffs alleged that the State was continuing to underfund special education in violation of the Headlee Amendment. The plaintiffs filed an additional claim that the State violated Article 9, Section 11 of the State Constitution of 1963, often called the Proposal A guarantee, a per-pupil school funding guarantee of at least the fiscal year (FY) 1994-95 level, by using foundation allowance payments to satisfy special education funding obligations. The third claim asserted that the State also violated the Headlee

Amendment by underfunding school lunch programs.

The Decision: In October 1999, the Michigan Court of Appeals issued a ruling in favor of the State in two of the three claims listed above. First, the Court held that the State did not violate the Headlee Amendment in regard to funding the necessary costs associated with State-mandated special education programs, services, and transportation. In other words, the funding method adopted in P.A. 142 of 1997 did meet the special education funding obligations required by *Durant I*. Second, the Court found that the State did in fact violate the funding guarantee outlined in Article 9, Section 11 of the State Constitution. This guarantee was added when Proposal A was adopted by the voters in 1994, and guarantees that school districts will not receive less unrestricted operational per-pupil funding than they received in FY 1994-95. In other words, the foundation allowance payments that were restricted for special education purposes beginning with P.A. 142 of 1997 cannot also be counted toward meeting the Proposal A guarantee. Finally, the Court found that the State did not violate the Headlee Amendment in regard to funding school lunch programs. A monetary judgment was not issued; however, the plaintiffs were awarded legal fees as settlement.

Resulting Changes Made in the School Aid Act: Public Act 297 of 2000 includes several changes in which school districts receive payments, for both general education and special education pupils. Three payments are now made: 1) a payment equivalent to the amount reached by multiplying a district's total pupil membership (including special education pupils) by the district's FY 1994-95 foundation allowance; 2) a payment equivalent to roughly 28% of the approved costs of the district's special education programs plus roughly 70% of the approved costs of the district's special education transportation costs; and 3) a "discretionary" payment to ensure that districts receive what they otherwise would have received under certain sections of prior versions of the State School Aid Act, if the first two payments are not sufficient. (A hypothetical district example illustrating this process is attached.) By making the first two payments, the State believes that it is meeting the two Constitutional obligations facing the State: Proposal A and Headlee. Essentially, several sections of the School Aid Act in place after *Durant I* and before P.A. 297 of 2000 are retained and used for calculation purposes only. These sections include the calculation of general education memberships and resulting foundation allowance allocations; special education memberships and resulting foundation allowance calculations; special education program and transportation cost calculations; and miscellaneous special education sections. In P.A. 297 of 2000, these sections are used to calculate how much a district *would have received* if no change in the law occurred.

DURANT III AND ADAIR

The Cases: A total of 443 districts and ISDs filed two cases, which are often lumped together as *Durant III*. It is important to separate the two suits into *Durant III*, a continuation along the lines of the previous two actions, and *Adair*, a new suit alleging that various items of the Revised School Code are new mandates or increases in the levels of existing services or activities, that are underfunded or unfunded, thereby violating the Headlee Amendment. In *Durant III*, the plaintiffs allege that the State, via P.A. 297 of 2000, is continuing to allocate the per-pupil revenue guaranteed by Proposal A for the restricted purpose of paying the costs of special education programs and services. Further, the suit alleges that the State, in violation of the Headlee Amendment, is not meeting its constitutional funding obligations with respect to special education and special education transportation.

In *Adair*, several Headlee Amendment issues are raised. Count I of the suit alleges that the State has mandated an increased level of special education activities without providing increased revenues to support them. Examples of these mandates include teacher-to-student ratios, teacher aides in certain classes, and caseload requirements. Count II of the suit claims that the State requires an increased level of minimum days and hours of pupil instruction without adequate funding. Finally, Count III alleges that the State requires the following items in certain situations without providing funding: annual financial audits; instruction about dangerous communicable diseases; development of school improvement plans; provision of a core academic curriculum; administration of State assessments; accreditation; provision of teacher professional development; and, creation and maintenance of data on essential student data elements.

The Decision: No decision has yet been rendered in either of these cases.

SFA Interpretation of *Durant III*: It is the interpretation of the Senate Fiscal Agency that the plaintiffs' claims of underfunding in *Durant III* essentially rest on guaranteeing a current-year foundation allowance payment for all pupils, plus roughly 28% of the costs of special education and roughly 70% of the costs of special education transportation. The current School Aid Act guarantees the FY 1994-95 foundation allowance payment for all pupils, plus roughly 28% of the costs of special education and roughly 70% of the costs of special education transportation, and also makes a discretionary payment. The "value" of the discretionary payment differs among districts based upon their current-year calculated foundation allowances, their pupil memberships (both general education and special education), and special education costs.

Hypothetical District Monetary Example
Illustrating Change in Funding Allocation in P.A. 297 of 2000

District Data

A -- 400 General Education Pupils

B -- 50 Special Education Pupils

C -- Current-Year Foundation Allowance = \$6,000 Per Pupil

D -- Special Education Costs = \$1,500,000

[*Durant*/Headlee percentage = 28.6138%]

E -- Special Education Transportation Costs = \$250,000

[*Durant*/Headlee percentage = 70.4165%]

F -- Local Revenue Portion (deduct) = \$500,000

G -- FY 1994-95 Foundation Allowance = \$4,800 Per Pupil

Process in Place **Prior** to P.A. 297 of 2000

Section 20 Foundation Allowance Revenue:	\$2,400,000 ¹	=	A x C
Local Revenue Portion (deduct)	(\$500,000)	=	(F)
<i>PLUS</i>			
Section 51a(2) and (3) Special Ed. Payment:	\$605,248 ²	=	(.286138 x D) + (.704165 x E)
H -- District A's Total State Payment:	\$2,505,248	=	Sum of Above

¹The Sec. 20 Foundation Allowance Revenue is determined by multiplying the general education pupils (400) by the current-year foundation allowance (\$6,000).

²The Sec. 51a(2) and (3) Revenue is determined by first calculating the special education foundation allowance revenue (50 special education pupils X \$6,000 = \$300,000), and determining if that amount satisfies the *Durant* - Headlee special education funding percentage obligations (28.6138% times \$1,500,000 plus 70.4165% times \$250,000 = \$605,248). Since it does not, the district would receive \$300,000 in special education foundation allowance payments plus \$305,248 in Headlee obligation payments.

<u>Process Enacted in P.A. 297 of 2000</u>		
I -- Proposal A Obligation Payment:	\$2,160,000 ³	= (A + B) x G
Local Revenue Portion (deduct):	(\$500,000)	= (F)
PLUS		
J -- <i>Durant</i> - Headlee Obligation:	\$605,248 ⁴	= (.286138 x D) + (.704165 x E)
PLUS		
Discretionary Payment:	\$240,000 ⁵	= H - I - J
District A's Total State Payment:	\$2,505,248	= Sum of Above

³The Proposal A Obligation Payment is calculated by multiplying District A's general education PLUS special education pupils by the district's FY 1994-95 foundation allowance.

⁴The *Durant* - Headlee Obligation Payment is calculated by applying the court-mandated percentages to costs (28.6138% times \$1,500,000 plus 70.4165% times \$250,000 = \$605,248).

⁵The Discretionary Payment is calculated by subtracting the Proposal A Obligation Payment, the Local Revenue Portion, and the *Durant* - Headlee Obligation Payment from the district's Total State Payment calculated under the process in place prior to P.A. 297 of 2000.
